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6 44 Montgomery Street, Suite 750  
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10 Attorneys for Defendant  
11 UNITED NATIONAL INSURANCE COMPANY

12  
13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO/OAKLAND DIVISION

17 FIREMAN'S FUND INSURANCE  
18 COMPANY,

19 Plaintiff,

20 v.

21 UNITED NATIONAL INSURANCE  
22 COMPANY and DOES 1 through 10.

23 Defendants.

24 Action No.: C 07-04943 JL

25 CERTIFICATE OF SERVICE OF NOTICE  
OF REMOVAL UNDER 28 U.S.C. §  
1441(b)

26 I, Fatima Puente, declare and certify as follows:

27 I am over the age of 18 years and not a party to this action. My business address is  
28 44 Montgomery Street, 18th Floor, San Francisco, California, where the mailing described  
below took place.

On September 24, 2007, I deposited in the United States Mail at San Francisco,  
California, in a postage prepaid envelope addressed to plaintiff's attorneys, Christopher J.  
Borders, Casey A. Hatton, Hinshaw & Culbertson LLP, One California Street, 18th Floor,

1 San Francisco, CA 94111, copies of the following documents:

- 2 1. Notice of Removal to Federal Court, dated September 24, 2007.
- 3 2. State Court Notice of Removal Of Action to Federal Court Under 28 U.S.C.  
4 § 1441(b), dated September 24, 2007.
- 5 4. Civil Cover Sheet.
- 6 5. Notice of Assignment to United States Magistrate Judge For Trial.
- 7 6. Order Setting Initial Case Management Conference and ADR Deadlines.
- 8 7. U.S. District Court Northern California ECF Registration Information  
9 Handout.
- 10 8. Document entitled "Welcome to the U.S. District Court San Francisco."
- 11 9. List of judges and magistrate judges.

12 A true and correct copy of the State Court Notice of Removal of Action to Federal  
13 Court Under 28 U.S.C. § 1441(b), dated September 24, 2007, is attached to this  
14 Certificate.

15 I declare and certify under penalty of perjury that the foregoing is true and correct.  
16 Executed September 26, 2007, at San Francisco, California.

17  
18  
19 By: \_\_\_\_\_  
20 Fatima Puente

*Fatima Puente*

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10 Attorneys for Defendant  
11 UNITED NATIONAL INSURANCE COMPANY

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF MARIN

14 UNLIMITED JURISDICTION

15 FIREMAN'S FUND INSURANCE  
16 COMPANY,

17 Plaintiff,

18 v.

19 UNITED NATIONAL INSURANCE  
COMPANY and DOES 1 through 10.

20 Defendants.

21 Action No.: CV073974

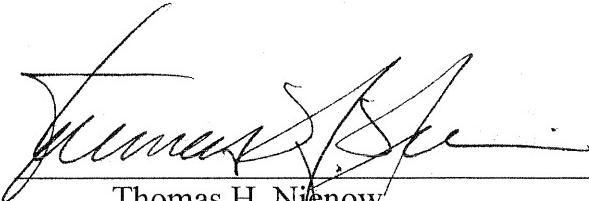
22 STATE-COURT NOTICE OF REMOVAL  
OF ACTION TO FEDERAL COURT UNDER  
28 U.S.C. § 1441(b)

23 TO THE CLERK OF THE COURT, TO PLAINTIFF AND TO ALL COUNSEL  
24 OF RECORD:

25 PLEASE TAKE NOTICE that defendant United National Insurance Company has  
26 filed a Notice of Removal of this action, pursuant to 28 U.S.C. § 1441(b), in the United  
27 States District Court for the Northern District of California. United National filed the  
28 Notice of Removal on September 24, 2007, and the Federal Court has assigned the matter  
Action No. C 07-04943 JL. A true and correct copy of the Notice of Removal is attached

1 hereto.

2 NIELSEN, HALEY & ABBOTT LLP

3  
4  
5 Dated: September 24, 2007  
6 By: 

7  
8  
9  
10 Thomas H. Nielsen  
11 Attorneys for Defendant  
12 UNITED NATIONAL INSURANCE COMPANY  
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ORIGINAL  
FILED  
07 SEP 24 PM 2:48  
RICHARD W. WIEKING  
CLERK OF THE DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 JAMES C. NIELSEN (111889)  
2 *jnielsen@nielsenhaley.com*  
3 THOMAS H. NIENOW (136454)  
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10 Attorneys for Defendant  
11 UNITED NATIONAL INSURANCE COMPANY

12 FIREMAN'S FUND INSURANCE  
13 COMPANY,

14 Plaintiff,

15 v.

16 UNITED NATIONAL INSURANCE  
17 COMPANY and DOES 1 through 10.

18 Defendants.

19 Action No. 07 4943

20 NOTICE OF REMOVAL OF ACTION  
21 UNDER 28 U.S.C. § 1441(b)

22 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

23 PLEASE TAKE NOTICE that defendant United National Insurance Company,  
24 pursuant to 28 U.S.C. § 1441(b), removes to this Court the state court action described  
below.

25 1. On August 21, 2007, plaintiff Fireman's Fund Insurance Company filed in  
the Superior Court of the State of California in and for the County of Marin, an action  
26 styled *Fireman's Fund Insurance Company v. United National Insurance Company et al.*,  
27 Marin County Superior Court Action No. CV073974 (the "Fireman's Fund action"). A  
28

1 true and correct copy of the complaint in the *Fireman's Fund* action is attached hereto.

2 2. Defendant United National Insurance Company first received notice of the  
 3 *Fireman's Fund* action on August 28, 2007.

4 3. The *Fireman's Fund* action is a civil action of which this Court has original  
 5 jurisdiction under 28 U.S.C. § 1332(a), and is one which may be removed to this Court by  
 6 defendant United National pursuant to the provisions of 28 U.S.C. § 1441(b) in that it is a  
 7 civil action between citizens of different states and the matter in controversy exceeds the  
 8 sum of \$75,000, exclusive of interest and costs.

9 4. The *Fireman's Fund* action concerns insurance-coverage issues arising from  
 10 underlying litigation styled *Tracy v. Lovelace Sandia Health Services et al*, State of New  
 11 Mexico Second Judicial District Court, County of Bernalillo, Action No. CV 2005 07009  
 12 (the “*Tracy* action”). The *Tracy* action has settled and the issues raised by the *Fireman's*  
 13 *Fund* action can have no effect on the *Tracy* action. United National is informed and  
 14 believes that Fireman's Fund seeks, at the least, reimbursement of \$399,000, which, along  
 15 with \$100,000 paid by United National, Interstate Fire & Casualty Company, Fireman's  
 16 Fund's subsidiary or affiliate, contributed to settle the *Tracy* action. The *Fireman's Fund*  
 17 action is, therefore, not a mere declaratory-judgment action subject to the Court's  
 18 discretionary jurisdiction. See, e.g., *Snodgrass v. Provident Life and Acc. Ins. Co.*, 147  
 19 F.3d 1163, 1167 (9th Cir. 1998) (“the essence of this case is a suit for damages[;] the  
 20 district court's dismissal under the Declaratory Judgment Act constituted an abuse of  
 21 discretion”); *HS Services, Inc. v. Nationwide Mut. Ins. Co.* (9th Cir. 1997) 109 F.3d 642,  
 22 644 n. 1 (“This action does not implicate the prudential concerns of *Employers Reins.*  
 23 *Corp. v. Karussos*, 65 F.3d 796 (9th Cir. 1995), and *American Nat'l Fire Ins. Co. v.*  
 24 *Hungerford*, 53 F.3d 1012 (9th Cir. 1995), because this is not a declaratory relief action  
 25 and the underlying state court action has ended); *Maryland Cas. Co. v. Knight*, 96 F.3d  
 26 1284, 1289 (9th Cir. 1996) (“The federal action here is neither ‘reactive’ to, nor  
 27 duplicative of, any parallel state proceeding”).

28 5. Defendant United National is informed and believes that plaintiff Fireman's

1 Fund was, at the time the *Fireman's Fund* action was filed, and still is, a California  
2 corporation having its principal place of business in California. Defendant United National  
3 was, at the time the *Fireman's Fund* action was filed, and still is, a Pennsylvania  
4 corporation having its principal place of business in Bala Cynwyd, Pennsylvania. United  
5 National is informed and believes that no other defendants have been named or served in  
6 this matter.

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NIELSEN, HALEY & ABBOTT LLP

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Dated: September 24, 2007

By:



Thomas H. Niehow  
Attorneys for Defendant  
UNITED NATIONAL INSURANCE COMPANY

HINSHAW &amp; CULBERTSON LLP Fax: 4158349070

Aug 21 2007 14:19

P.03

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):  
UNITED NATIONAL INSURANCE COMPANY, and Dues 1-10

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
FIREMAN'S FUND INSURANCE COMPANY**

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en este corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/seithelp/espanol](http://www.courtinfo.ca.gov/seithelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de extensión de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que hable a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/seithelp/espanol](http://www.courtinfo.ca.gov/seithelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):  
Marin County Superior Court  
3501 Civic Center Drive, Room 116

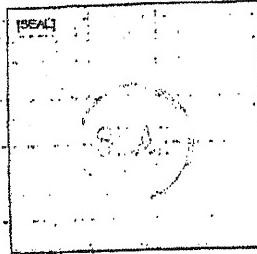
San Rafael, CA 94903

CASE NUMBER: *CJ 073974*  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Christopher J. Borders (SBN: 135901) (415) 362-6000HINSHAW & CULBERTSON LLP  
One California Street, 18th Floor  
San Francisco, CA 94111DATE: *AUG 21 2007* Clerk, by *J. DALE* Deputy  
(Fecha) (Señoría) (Adjunto)(For proof of service of this summons, use Proof of Service of Summons (form POS-010).  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served



1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify): *United National Insurance Company*

- under:
- |  |   |
|--|---|
| <input checked="" type="checkbox"/> CCP 416.10 (corporation)     | <input type="checkbox"/> CCP 416.60 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservator)       |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.80 (authorized person) |
| <input type="checkbox"/> other (specify):                        |   |

4.  by personal delivery on (date): *8/28/07*

HINSHAW&CULBERTSON LLP Fax:4158349070

Aug 21 2007 14:19 P.04

FILED  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AUG 21 2007

1 CHRISTOPHER J. BORDERS (SBN 135901)  
2 CASEY A. HATTON (SBN 246081)  
2 HINSHAW & CULBERTSON LLP  
One California Street  
3 18th Floor  
San Francisco, CA 94111  
4 Telephone: 415-362-6000  
Facsimile: 415-834-9070

5  
6 Attorneys for Plaintiff  
FIREMAN'S FUND INSURANCE COMPANY

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF MARIN

10 UNLIMITED JURISDICTION

11 FIREMAN'S FUND INSURANCE  
COMPANY,

Case No. CV 073974 BY FAX

12 Plaintiffs,

COMPLAINT FOR:

13 vs.  
14 UNITED NATIONAL INSURANCE  
15 COMPANY, and DOES 1 - 10

16 Defendants.

- (1) DECLARATORY RELIEF:  
DEFENSE COSTS
- (2) DECLARATORY RELIEF:  
INDEMNITY EXPENSES
- (3) EQUITABLE INDEMNITY
- (4) EQUITABLE CONTRIBUTION
- (5) EQUITABLE SUBROGATION

17  
18 Plaintiff Fireman's Fund Insurance Company ("FIREMAN'S FUND"), on information and  
19 belief, alleges as follows:

20 NATURE OF ACTION

21 This is a civil action for declaratory judgment, equitable indemnity, equitable contribution,  
22 and equitable subrogation seeking a declaration of the rights, duties and liabilities of the parties  
under certain insurance policies issued by FIREMAN'S FUND, defendant United National  
23 Insurance Company ("UNITED NATIONAL"), and DOES 1 - 10, and for an order directing  
24 UNITED NATIONAL and DOES 1 - 10 to pay damages and restitution.

25  
26 I. FIREMAN'S FUND seeks a declaration that UNITED NATIONAL and DOES 1 - 10  
27 had an obligation to defend and/or indemnify the mutual insured of the parties, Cirrus Medical  
28 Staffing, Inc., (the "Insured") with respect to the claims asserted against the Insured, as more

1 specifically described in paragraphs 6 through \_\_\_ below, relating to the tort claims of Ben Tracy as  
 2 set forth in the action filed with the New Mexico Second Judicial District, case number CV 2005  
 3 07009 and entitled *Ben Tracy, as personal representative of the Estate of Marilyn Tracy v. Lovelace*  
 4 *Sandia Health Services, et al.* ("Underlying Action")

5       2. Defendants DOES 1 through 10, inclusive, are sued herein by fictitious names  
 6 because FIREMAN'S FUND does not know the true names, capacities or specific activities of said  
 7 defendants at this time; but alleges that each of said defendants is or may be legally liable to  
 8 FIREMAN'S FUND, and therefore FIREMAN'S FUND will insert the true name, capacity, and/or  
 9 activities of said defendants when they are ascertained.

10      3. An actual and justiciable controversy exists among and between FIREMAN'S  
 11 FUND, UNITED NATIONAL and DOES 1 - 10 over the rights, duties, and obligations of the  
 12 parties arising out of the terms, conditions, exclusions, and provisions of the insurance policies  
 13 issued by each of the parties to the Insured, with respect to the defense and indemnification of the  
 14 Insured for the claims set forth in the Underlying Action, including, without limitation, the claims  
 15 described below in paragraphs 6 through \_\_\_ of this complaint.

#### PARTIES

17      4. Plaintiff FIREMAN'S FUND is an insurance company incorporated in California  
 18 with its principal place of business in California.

19      5. Defendant UNITED NATIONAL is an insurance company with its principal place of  
 20 business in Pennsylvania. On information and belief, FIREMAN'S FUND alleges that UNITED  
 21 NATIONAL is authorized to and conducts business in the state of California.

#### GENERAL ALLEGATIONS

23      6. FIREMAN'S FUND issued a claims-made professional liability policy to the Insured.

24      7. UNITED NATIONAL issued a claims-made professional liability insurance policy to  
 25 the Insured for the policy period January 27, 2006 through January 27, 2006.

26      8. On October 7, 2004, Marilyn Tracy died while in the care of Lovelace Sandia Health  
 27 Services d.b.a. Albuquerque Regional Medical Center ("the Medical Center"). Thereafter, in 2005,  
 28 //

1 Ben Tracy brought the Underlying Action against the Medical Center alleging that Marilyn Tracy  
2 died due to the negligence of several registered nurses including Registered Nurse Cathy Robinson.

3       9.      The Underlying Action alleges that several registered nurses, including Registered  
4 Nurse Cathy Robinson negligently failed to monitor Marilyn Tracy's fluid signs, vital signs and  
5 oxygen saturations, failed to respond to Tracy's worsening vital signs, and failed to notify the  
6 physician that Tracy's condition was worsening.

7       10.     On March 21, 2006, Plaintiff Tracy amended the Underlying Action to add the  
8 Insured as a defendant based on allegations that the Insured contracted with the Medical Center to  
9 provide the Medical Center with medical staff. At the time of Tracy's death, Nurse Cathy Robinson  
10 was employed by, or contracted with, the Insured to provide nursing services to the Medical Center.

11       11.     After receiving service of the Complaint, the Insured tendered its defense and  
12 indemnity to FIREMAN'S FUND. FIREMAN'S FUND agreed to defend the Insured under a  
13 reservation of rights.

14       12.     The Insured also tendered its defense and indemnity to UNITED NATIONAL. On  
15 October 6, 2006, UNITED NATIONAL agreed to defend the Insured under a reservation of rights.

16       13.     Thereafter, FIREMAN'S FUND and UNITED NATIONAL engaged in a joint  
17 defense of the Underlying Action on behalf of their mutual insured.

18       14.     However, on February 13, 2006, UNITED NATIONAL informed the Insured and  
19 FIREMAN'S FUND that was disclaiming any obligation to indemnify the insured for the claims in  
20 the underlying action and was withdrawing from the joint defense of the Underlying Action.

21       15.     FIREMAN'S FUND is informed, and believes, that UNITED NATIONAL  
22 disclaimed coverage based, in part, on its erroneous interpretation of the definition of "claim" in its  
23 policy.

24       16.     The UNITED NATIONAL policy defines "Claim" as

25       [A] written demand upon the insured for 'compensatory damages', including, but not  
26 limited to, the service of 'suit' or institution of arbitration proceedings against the  
27 insured. 'Claim' includes reports of accidents, acts, errors, occurrences, offenses or  
28 omissions which may give rise to a 'claim' under this policy. (Emphasis added).

1       17. UNITED NATIONAL may not disclaim coverage based on its tautological definition  
2 of "claim." This contract provision is ambiguous because it purports to define a term, but illogically  
3 reincorporates the term itself in the definition, rendering the definition nonsensical and ambiguous.  
4 UNITED NATIONAL may not disclaim coverage for the Underlying Action based on this  
5 ambiguous term.

6       18. Furthermore, UNITED NATIONAL'S policy states that a "claim" must be written.  
7 No "written demand" was made on the Insured prior to the inception of the UNITED NATIONAL  
8 policy. UNITED NATIONAL may not disclaim coverage for the Underlying Action based on its  
9 definition of "claim."

10      19. FIREMAN'S FUND is informed, as believes, that UNITED NATIONAL also  
11 disclaimed coverage based, in part, on the contradictory "other insurance" provisions in its policy.

12      20. UNITED NATIONAL'S Insuring Agreement provides, in pertinent part, that,  
13             This insurance applies to injury only if a "claim" for damages to which no other  
14             insurance applies, because of the injury is first made against the insured and reported  
15             to us during the "policy period."

16      21. The UNITED NATIONAL policy's Liability Conditions provide in pertinent part,  
17             Other Insurance

18             If other valid and collectible insurance with any other insurer is available to the  
19             insured covering a "claim" also covered hereunder (except insurance purchased to  
20             apply in excess of the limit of liability hereunder), this insurance will be excess of,  
21             and not contribute with, such insurance.

22      22. UNITED NATIONAL may not disclaim coverage based on these contradictory and  
23 ambiguous provisions. On the one hand, the Insuring Agreement appears to state that the policy will  
24 not apply at all when other insurance is available. The "Other Insurance" Condition states in direct  
25 contradiction, that the policy will apply as excess coverage when other insurance is available. When  
26 read together, these policy provisions are at odds with each other and render both provisions  
27 ambiguous.

28      23. In addition, UNITED NATIONAL may not disclaim coverage based on its "other  
29 insurance" provisions because FIREMAN'S FUND'S policy also contains an "other insurance"

provision which similarly provides that its policy will be in excess of other insurance. United National's "other insurance" clauses must be disregarded.

3        24. FIREMAN'S FUND is informed, as believes, that UNITED NATIONAL also  
4        disclaimed coverage based, in part, on its insufficient reservation of the right to change its position  
5        regarding coverage based on "any alternative and/or additional basis in the event that factual  
6        evidence develops or is presented as relates to you or you practice." UNITED NATIONAL may not  
7        disclaim coverage based on its reservation of rights because no new or additional factual evidence  
8        developed or was presented after October 6, 2006 that would provide an alternative and/or additional  
9        basis to disclaim coverage. UNITED NATIONAL has accordingly, waived its rights to assert these  
0        coverage defenses.

11        25. FIREMAN'S FUND adhered to its duty to defend its Insured and, in or about March  
12 2007, was able to reach a settlement agreement on behalf of the Insured.

13        26. FIREMAN'S FUND indemnified the insured for the full settlement amount of  
14        \$499,000.00.

15       27. After indemnifying the mutually insured, FIREMAN'S FUND attempted informal  
16 resolution of its claim against UNITED NATIONAL for its share of the settlement.

**FIRST CAUSE OF ACTION**

19       28. FIREMAN'S FUND repeats and realleges each and every allegation of paragraphs 1  
20 through 27 of this complaint and incorporates such by reference as though fully set forth herein.

21       29. An actual controversy of a justiciable nature now exists between FIREMAN'S FUND  
22 and UNITED NATIONAL concerning the obligations owed by UNITED NATIONAL to reimburse  
23 FIREMAN'S FUND for the defense costs incurred by FIREMAN'S FUND for the defense of the  
24 parties' mutual Insured in the Underlying Action.

25       30. FIREMAN'S FUND seeks a declaration that, under the terms, definitions, conditions,  
26 and exclusions of the policies issued by UNITED NATIONAL to the Insured, UNITED  
27 NATIONAL had an ongoing duty to defend the Insured with respect to the claims asserted against it

pursuant to the Underlying Action, and now has an obligation to reimburse FIREMAN'S FUND a share of the defense costs incurred by FIREMAN'S FUND in defense of the mutual insured.

3       31. The controversy is of sufficient immediacy to justify the issuance of a declaratory  
4 judgment.

5       32. The issuance of a declaratory judgment will resolve some or all of the existing  
6 controversy between FIREMAN'S FUND and UNITED NATIONAL.

**SECOND CAUSE OF ACTION**  
Declaratory Relief: Indemnity Expenses  
(As to Defendant United National)

9       33. FIREMAN'S FUND repeats and realleges each and every allegation of paragraphs 1  
10 through 27 of this complaint and incorporates such by reference as though fully set forth herein.

11       34. An actual controversy of a justiciable nature now exists between FIREMAN'S FUND  
12 and UNITED NATIONAL concerning the obligations owed by UNITED NATIONAL to indemnify  
13 the parties' mutual Insured for the settlement reached on behalf of the Insured in the Underlying  
14 Action.

15       35. FIREMAN'S FUND seeks a declaration that, under the terms, definitions, conditions,  
16 and exclusions of the policies issued by UNITED NATIONAL to the Insured, UNITED  
17 NATIONAL had an ongoing duty to indemnify the Insured with respect to the claims asserted  
18 against it in the Underlying Action, and has an obligation to reimburse FIREMAN'S FUND a share  
19 of the indemnity expenses incurred in defense of the mutual Insured.

20       36. The controversy is of sufficient immediacy to justify the issuance of a declaratory  
21 judgment.

22       37. The issuance of a declaratory judgment will resolve some or all of the existing  
23 controversy between FIREMAN'S FUND and UNITED NATIONAL.

**THIRD CAUSE OF ACTION**  
**Equitable Indemnity**  
**(As to All Defendants)**

26       38. FIREMAN'S FUND repeats and realleges each and every allegation of paragraphs 1  
27 through 27 of this complaint and incorporates such by reference as though fully set forth herein.

1       39. FIREMAN'S FUND has paid sums toward the defense of the parties' mutual Insured  
2 against the claims in the Underlying Action, and has paid sums to settle the claims asserted against  
3 the Insured in the Underlying Action.

4           40. FIREMAN'S FUND, UNITED NATIONAL and DOES 1 - 10 are liability insurers of  
5 the Insured.

6       41. UNITED NATIONAL and DOES 1 - 10 refused to defend or indemnify the parties'  
7 mutual Insured on, or after, February 13, 2006 , forcing FIREMAN'S FUND to pay for more than its  
8 fair share of the defense and settlement of the Underlying Action on behalf of the Insured.

9           42.     UNITED NATIONAL and DOES 1 to 10 are obligated to equitably indemnify  
10 FIREMAN'S FUND for all defense costs and indemnity expenses incurred by FIREMAN'S FUND  
11 on behalf of the parties' mutual Insured, and to pay statutory interest to FIREMAN'S FUND.

12       43.     UNITED NATIONAL and DOES 1 - 10 must reimburse FIREMAN'S FUND for all  
13 defense costs and indemnity expenses paid by FIREMAN'S FUND to defend the parties' mutual  
14 insured in the Underlying Action, and to pay statutory interest to FIREMAN'S FUND.

**FOURTH CAUSE OF ACTION**  
**Equitable Contribution**  
**(As to All Defendants)**

17       44. FIREMAN'S FUND repeats and realleges each and every allegation of paragraphs 1  
18 through 27 of this complaint and incorporates such by reference as though full set forth herein.

19       45. FIREMAN'S FUND has paid sums toward the defense of the parties' mutual Insured  
20 against the claims in the Underlying Action, and has paid sums to settle the claims asserted against  
21 the Insured in the Underlying Action.

22           46. FIREMAN'S FUND, UNITED NATIONAL and DOES 1 - 10 are liability insurers of  
23 the Insured.

24       47. UNITED NATIONAL and DOES 1 - 10 refused defend or indemnify the parties'  
25 mutual Insured on, or after, February 13, 2006, forcing FIREMAN'S FUND to pay for more than its  
26 fair share of the defense and settlement of the Underlying Action on behalf of the Insured.

48. UNITED NATIONAL and DOES 1 - 10 are obligated to equitably contribute to the defense costs and indemnity expenses incurred by FIREMAN'S FUND on behalf of the parties' mutual insured, and to pay statutory interest to FIREMAN'S FUND.

49. UNITED NATIONAL and DOES 1 - 10 must reimburse FIREMAN'S FUND for an equitable portion of the defense costs and indemnity expenses paid by FIREMAN'S FUND to defend the parties' mutual insured in the Underlying Action, and to pay statutory interest to FIREMAN'S FUND.

50. This claim for equitable contribution is pleaded in the alternative to the claim for equitable subrogation.

## **FIFTH CAUSE OF ACTION**

**Equitable Subrogation  
(As to All Defendants)**

51. FIREMAN'S FUND repeats and realleges each and every allegation of paragraphs 1 through 28 of this complaint and incorporates such by reference as though full set forth herein.

52. This claim for equitable subrogation is pleaded in the alternative to the claim for equitable contribution.

53. FIREMAN'S FUND, UNITED NATIONAL and DOES 1 - 10 have the obligation to make full payment, on behalf of the parties' mutual insured, for the full debt owed in the Underlying Action.

54. FIREMAN'S FUND satisfied its obligation to defend and indemnify the parties' mutual Insured and has paid to settle all debts owed by the Insured.

55. UNITED NATIONAL and DOES 1 - 10 refused to defend and indemnify the parties' mutual Insured and further failed to pay their fair share of the defense costs and debts owed by Insured in the Underlying Action.

56. FIREMAN'S FUND paid the loss in this Underlying Action, thus entitling it to the rights, remedies, or securities that would otherwise belong to the debtor.

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## PRAYER FOR RELIEF

WHEREFORE, FIREMAN'S FUND respectfully requests this court enter an Order and Judgment declaring as follows:

1. A judicial declaration that UNITED NATIONAL is obligated to defend the Insured for the claims in the Underlying Action at all times mentioned herein; and, is consequently obligated to reimburse FIREMAN'S FUND a portion of defense costs incurred by FIREMAN'S FUND in defense of the mutual Insured;
  2. A judicial declaration that UNITED NATIONAL is obligated to indemnify the Insured for the claims in the Underlying Action at all times mentioned herein; and, is consequently obligated to reimburse FIREMAN'S FUND some or all of the indemnity payments made by FIREMAN'S FUND;
  3. That FIREMAN'S FUND is entitled to complete equitable indemnification from UNITED NATIONAL and DOES 1 – 10 for all the defense costs and indemnity expenses incurred by FIREMAN'S FUND in defending and indemnifying the Insured in the Underlying Action;
  4. That FIREMAN'S FUND is entitled to equitable contribution from UNITED NATIONAL and DOES 1 – 10 for defense costs and indemnity expenses incurred by FIREMAN'S FUND in defending and indemnifying the Insured in the Underlying Action;
  5. Alternatively, to the extent that equitable contribution is not granted, that FIREMAN'S FUND paid the loss in this Underlying Action and is entitled to equitably subrogate the Insured's rights against UNITED NATIONAL and DOES 1 – 10 for full reimbursement of the full debt owed in defending and indemnifying the Underlying Action;
  6. That FIREMAN'S FUND is entitled to interest on the reimbursement due from UNITED NATIONAL and DOES 1 to 10 at the statutory rate;
  7. For FIREMAN'S FUND attorney's fees and costs incurred in this litigation; and

3 | DATED: August 26, 2007

HINSHAW & CULBERTSON LLP

CHRISTOPHER J. BORDERS  
CASEY A. HATTON  
Attorneys for Plaintiff  
FIREMAN'S FUND INSURANCE COMPANY

2961358..838180

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**PROOF OF SERVICE**

2

I declare that:

3

I am a citizen of the United States, employed in the County of San Francisco. I am over  
4 the age of eighteen years, and not a party to the within cause. My business address is  
5 44 Montgomery Street, Suite 750, San Francisco, California 94104.

6

7

On the date set forth below I served the following document(s) described as:

8

**STATE-COURT NOTICE OF REMOVAL OF ACTION TO FEDERAL COURT  
UNDER 28 U.S.C. § 1441(b)**

9

10

[ ] (BY FACSIMILE) by transmitting via facsimile the document(s) listed above to the  
fax number(s) set forth below, or as stated on the attached service list, on this date.

11

12

[ XX ](BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in  
the United States mail at San Francisco, California.

13

14

[ ] (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand this date  
to the offices of the addressee(s).

15

16

[ ] (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an  
overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it  
is to be served.

17

**ATTORNEY FOR PLAINTIFF**  
**FIREMAN'S FUND INSURANCE COMPANY**

18

Christopher J. Borders

19

Casey A. Hatton

20

HINSHAW & CULBERTSON LLP

21

One California Street

22

18th Floor

23

San Francisco, CA 94111

24

Tel.: (415) 362-6000

25

Fax: (415) 834-9070

26

27

I declare under penalty of perjury that the foregoing is true and correct and that this  
declaration was executed on September 24, 2007 at San Francisco, California.

28



Fatima Puente

1  
2                   **PROOF OF SERVICE**  
3

I declare that:

4                   I am a citizen of the United States, employed in the County of San Francisco. I am over  
5                   the age of eighteen years, and not a party to the within cause. My business address is  
6                   44 Montgomery Street, Suite 750, San Francisco, California 94104.

7                   On the date set forth below I served the following document(s) described as:  
8

**CERTIFICATE OF SERVICE OF NOTICE OF REMOVAL UNDER  
28 U.S.C. § 1441(b)**

9                   [ ] (BY FACSIMILE) by transmitting via facsimile the document(s) listed above to the  
10                  fax number(s) set forth below, or as stated on the attached service list, on this date.

11                  [ ] (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in  
12                  the United States mail at San Francisco, California.

13                  [ ] (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand this date  
14                  to the offices of the addressee(s).

15                  [ ] (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an  
16                  overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it  
17                  is to be served.

18                  [ XX ] (BY ELECTRONIC SERVICE) by submitting an electronic version of the document(s)  
19                  to be served on all parties listed on the service list on file with the court as of this date.

20                  **Attorney for Plaintiff, Fireman's Fund Ins.**

21                  **Co.**

22                  Christopher J. Borders

23                  Casey A. Hatton

24                  Hinshaw & Culbertson LLP

25                  One California Street, 18th Floor

26                  San Francisco, CA 94111

27                  Tel: (415) 362-6000

28                  Fax: (415) 834-9070

29                  I declare under penalty of perjury that the foregoing is true and correct and that this  
30                  declaration was executed on September 28 2007, at San Francisco, California.

31                  \_\_\_\_\_  
32                  Fatima Puente  
33

34                  Fatima Puente